

**AMENDMENTS TO THE DRAWINGS**

Please amend the figures as shown in the enclosed replacement sheet. The attached sheet of drawings includes changes to the lead line of reference numeral 418 in Figure 4 as required by the Examiner. Applicant submits that the Replacement drawing is formal and no new matter has been added.

**REMARKS**

Applicants wish to thank the Examiner for his careful examination of the application. Applicants respectfully request that the Examiner reconsider the application in view of the above amendment and the following remarks.

**Disposition of the claims:**

Claims 1-15 are currently pending in this application. Claims 16-21 had been previously canceled as they were drawn to a non-elected invention. Claims 1 and 11 are independent. Claims 2-10 depend, directly or indirectly, from claim 1. Claims 12-15 depend, directly or indirectly, from claim 11.

**Objections to the drawings:**

The Examiner has objected to figure 4 because the numeral “418” as recited in the specification is used to designate the “gas spring” element but the lead line of “418” in figure 4 actually points to the frame instead of the gas spring. This error has been corrected in the replacement figure 4. Accordingly, withdrawal of this objection is respectfully requested.

The Examiner also objected to the figures in general under 37 CFR 1.83(a) because some elements recited in the claims are not shown in the figures. Specifically, the Examiner asserts that claims 2 and 11 recite a “forklift truck,” claim 9 recites a “dampener,” and claim 15 recites

“means for dampening” which are not shown in the figures. These objections are respectfully traversed.

Applicant submits that figure 1-3 clearly show a forklift truck 100, 200, and 300 respectively. Accordingly, the “forklift truck” recited in claims 2 and 11 is shown and fully supported by the figures as originally filed. Also, Applicant respectfully submits that the gas spring 418 shown in figures 4-7 shows and fully supports the “dampener” and “means for dampening” recited claims 9 and 15. See paragraphs [0046]-[0050] of the present specification, which describe that a gas spring, dampener, or, alternatively, a hydraulic device may be used in the invention. Moreover, one skilled in the art would appreciate that each possible alternative could be represented essentially the same in the figures. Accordingly, the figures as originally filed support the “dampener” and “means for dampening” recited claims 9 and 15. In view of the above, withdrawal of these objections is respectfully requested.

**Rejection under 35 U.S.C. §112 first paragraph:**

Claims 9 and 15 stand rejected under 35 U.S.C. §112 first paragraph as failing to comply with the enablement requirement. Specifically, the Examiner asserts that the specification does not adequately teach the “dampener” or “means for damping” limitations recited in the claims. This rejection is respectfully traversed.

MPEP 2164.01(a) lists eight factors (the Wands factors) as the factors to be considered for determining whether the specification meets the enablement requirement. The Wands factors are:

- (A) The breadth of the claims;
- (B) The nature of the invention;
- (C) The state of the prior art;
- (D) The level of one of ordinary skill;
- (E) The level of predictability in the art;
- (F) The amount of direction provided by the inventor;
- (G) The existence of working examples; and
- (H) The quantity of experimentation needed to make or use the invention based on

the content of the disclosure.

MPEP 2164.01(a) further states that it is improper to conclude that a disclosure is not enabling based on the analysis of only one of the above factors while ignoring one or more of the others.

In the Office Action, the Examiner has not provided any explanation as to how the Wands factors were applied to the claims in question, but merely asserted that the “dampener” and “means for damping” are not enabled by the specification. Applicants respectfully submit that when Wands factors are properly considered, claims 9 and 15, as recited, are fully enabled by the specification. For example, the specification specifically discloses using a gas spring to provide a force to offset a portion of the weight of the fuel tank and discusses the function of a motion damper (see paragraphs [0046]-[0050] of the present specification).

To apply the Wands factors analysis, the issue to consider here is whether a person of ordinary skill in the art, having the benefit of Applicants' disclosure, would be able to make and use the claimed invention. Applicants submit that because the invention is mechanical, *i.e.*, predictable, in nature and because motion damping devices are notoriously well known in the art, a person of ordinary skill in the art at the time of the invention given the benefit of Applicants' disclosure could easily appreciate that a gas spring is a type of dampener having the function of motion damping and that there are a wide variety of available alternative motion dampeners that could be used in conjunction with, or in place of, the gas spring. Furthermore, replacing the gas spring with other commonly known motion damping means would have been a straightforward substitution that is within the level of skill in the art and would not require any undue experimentation.

Thus, as those skilled in the art at the time of the invention in possession of the present specification would be readily able to make and use the invention described in the present specification, as well as appreciate alternative dampeners (such a hydraulic dampeners suggested in the present specification), claims 9 and 15 are fully supported and enabled by the original specification. In view of the above, claims 9 and 15 meet the requirements of 35 U.S.C. §112, first paragraph. Accordingly, withdrawal of this rejection is respectfully requested.

**Rejection under 35 U.S.C. §112 second paragraph:**

Claims 9 and 15 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. Specifically, the Examiner asserts that it is not clear as to

which element the “dampener” and “means for damping” limitation recited in the claims refer to. This rejection is respectfully traversed.

MPEP 2173.02 states that definiteness of claim language must be analyzed, not in vacuum, but in light of (A) the content of the particular application disclosure; (B) the teachings of the prior art; and (C) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

Referring to paragraphs [0046]-[0050] of the specification, Applicant respectfully submits that the meaning of “dampener” and “means for damping” are clearly discussed. For example, in paragraph [0046], it is recited that “...gas spring (418) provides a force that tends to pull the cradle toward the retracted position. Thus, the gas spring (418) retards the downward motion, and also assists an operator who is swinging the cradle (418) from the extended position to the retracted position.” This clearly describes the function of gas spring as a motion damping device. In paragraph [0048], it is further recited that “...the fuel tank bracket (406) is fitted with a motion damper designed to slow a free fall motion of the cradle (408) and the fuel tank (402) as the cradle (408) is maneuvered from the retracted position to the extended position.” As discussed above under with respect to the enablement rejection, motion dampers are notoriously well known in the art. The embodiment disclosed in the specification shows a “gas spring” but also provides description of alternative examples that can be used in conjunction with, or in place of the gas spring, which clearly communicate the meaning of the terms “dampener” and “means for damping” as used in the context of this invention to a person skilled in the art.

Because the terms “dampener” and “means for damping,” when read in the light of the specification, would have been readily appreciated by a person of ordinary skill in the art at the time of the invention, claims 9 and 15 meet the requirements of definiteness as required by 35 U.S.C. §112, second paragraph. Accordingly, withdrawal of this rejection is respectfully requested.

**Rejection under 35 U.S.C. §102(b):**

Claims 1-7, 9 and 11-15 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,637,706 (hereinafter “Kim”). This rejection is respectfully traversed.

Kim does not teach a single-stage swing down fuel bracket as recited in claim 1. Claim 1 clearly recites that the cradle is rotationally maneuverable between a retracted position and an extended position in a single stage, and that the cradle may be maneuvered between the retracted position and the extended position by simultaneously rotating outwardly and downwardly in relation to the vehicle. Referring to column 7, second paragraph, Kim teaches that the cradle “can be pivoted about a hinge 141 between the unfolded position C and the downwardly folded position D.” This description clearly indicates that the fuel tank bracket disclosed by Kim is not a single-stage swing down, but must go through two stages, stage C and stage D.

To further clarify this point, figure 3A and 3B of Kim shows how the fuel tank bracket is to be operated. In figure 3A, the cradle 20 is shown as having two sections, a first body 30 and a second body 40. The first body 30 is attached to a pivot 32 that is capable of rotating in only the horizontal plane. The second body 40 is attached to the first body 30 by a hinge 42, which

allows the second body to rotate in a plane perpendicular to the first body's plane of rotation. It is clear from these two figures that in order to unload the fuel tank, one must first rotate the cradle about pivot **32** to move the cradle into position C to clear the counterweight of the forklift and then fold the cradle about hinge **42** to let down the fuel tank. It is not possible to simultaneously move the cradle outwards and downwards. Thus, it is clear that Kim fails to disclose a single-stage down swing fuel tank bracket as recited in claim 1 and, therefore, claim 1 is patentable over Kim.

With regard to independent claim 11, because claim 11 also recites "single stage" and "in a direction that is outward and downward" limitations similar to claim 1, claim 11 is patentable over Kim for the same reasons. Dependent claims 2-7, 9 and 12-15 are patentable over Kim for at least these reasons. Accordingly, withdrawal of this rejection is respectfully requested.

Further, claims 1, 8 and 10 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,845,940 (hereinafter "Colburn"). This rejection is respectfully traversed.

The swinging arm cradle disclosed by Colburn relies on a tilted pivoting pin connecting the cradle to the base plate for its swinging action. As fully described by Colburn, in column 5-6, the swing arm is pivotally attached to the tilted pivot pin, and moves first slightly up over the rear of the counterweight before moving down to the side of the forklift truck. Based on the drawings and detailed descriptions of Colburn, it is clear that the motion of the swing arm is completely dictated by the tilted pivot pin and there is only one possible trajectory for the swinging motion, i.e., the arm must move upwards first to a neutral position before descending to the lower portion of the arcing trajectory (see particularly column 6, line 63 to column 7, line 1).



In contrast, claim 1 recites a single-stage swing down tank bracket that rotates from the retracted position to the extended position by simultaneously rotating outwardly and downwardly in one single stage. It does not go through a slightly higher neutral position as required by the swinging arm of Colburn. For at least this reason, claim 1 is patentable over Colburn. Dependent claims 8 and 10 are also patentable over Colburn for at least the same reasons. Accordingly, withdrawal of this rejection is respectfully requested.

### **Conclusion**

Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 06078/231001).

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Respectfully submitted,

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Attachments: Replacement drawing (1 page).